

REMARKS

Claims 1, 2, 5, 9-11, 30 and 31 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Yates et al '270. This rejection is respectfully traversed with respect to these claims as amended herein.

These claims as amended herein now specifically recite “electrically conductive members mounted in spaced substantially plane parallel array, with each member formed as a substantially planar sheet including a slotted opening extending inwardly from a forward edge thereof, and with the slotted openings of the members substantially transversely aligned to receive therein the tissue to be treated, each of the members including a conductive portion disposed above the slotted opening and a conductive portion disposed below the slotted opening to configure each member as an electrode disposed above and below the slotted opening and operable at one or opposite polarity.”

In addition, the dependent claims are further limited by such various recitations as “a mounting structure disposed at the distal end of an elongated body to support the members in spaced array with the slotted openings substantially aligned in a direction along an elongated axis of the body,” or “the width of each of the slotted openings convergingly tapers inwardly from the forward edge,” or “the cutter is disposed to move translationally within a plane parallel to the members along a direction aligned with the elongated axis of the body and laterally toward an

anvil disposed below the slotted openings during transition from the open configuration to the closed configuration,” or “the cutter includes a contoured surface for engaging a reference surface to transform translational movement of the cutter into translational and lateral movement relative to the anvil,” or “the anvil is interposed between the pair of members displaced from obstructing a transverse alignment of the slotted openings with the cutter disposed in the open configuration, the anvil extending substantially to the forward edges of the members, with the cutting edge of the cutter disposed to substantially engage the anvil in the closed configuration.”

These aspects of the claimed invention are not disclosed or even fairly construed in Yates et al '270 which merely relies on a pair of jaws for grasping tissue, and does not contain any disclosure of spaced plane-parallel conductor/electrode members, each having elongated inward slots aligned in a manner as now claimed. In consideration of the Examiner's comments and suggestions to patentably distinguish the invention over the cited art, the claims have been specifically amended to obviate the Examiner's analysis with respect to the cited reference.

Specifically, it must be noted that the jaws of Yates et al '270 for grasping tissue merely form one gap between jaws, and that no one electrode is configured with portions thereof disposed both above and below that gap, in any manner

resembling Applicants' claimed invention. At best, both electrodes 18, 39 are only disposed in one jaw (above the gap), or are separately disposed either above or below the gap (e.g. 251-252; 451-452), but no electrode is configured as now claimed by Applicants. As amended, the present claims now distinctively recite that each of a spaced pair of electrodes includes portions disposed above and below an inwardly-extending slot, and that such slots (plural) are transversely aligned across the spacing. In this way, a tissue structure may be retained transversely oriented within the slots (plural) across the spacing therebetween, in contrast to need for grasping jaws that form only one gap therebetween to receive the tissues and with no electrode traversing the gap, as in the apparatus now claimed.

In addition, the dependent claims are further distinguishable, for the reasons discussed in the above Remarks, and for such additional recitations as "a mounting structure disposed at the distal end of an elongated body to support the members in spaced array with the slotted openings substantially aligned in a direction along an elongated axis of the body," or "the width of each of the slotted openings convergingly tapers inwardly from the forward edge." Since plural slotted openings are now clearly defined as aligned transversely across the spacing between the slotted members, these claims are now distinguishable over the cited art that merely discloses a single gap between jaws that must alter the gap to grasp tissue. It is therefore respectfully submitted that claims 1, 2, 5, 9-11, 30 and 31 are not

anticipated by Yates et al '270 for its lack of adequate disclosure, but instead that these claims are now patentably distinguishable over the cited art.

Favorable consideration is solicited.

Respectfully submitted,
Michael C. Stewart, et al.

Dated: 3/19/09 By: /Albert C. Smith/
Albert C. Smith, Reg. No.: 20,355
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (650) 335-7296
Fax.: (650) 938-5200